THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.16119 OF 2007

DATED AUGUST, 2007

BETWEEN:

P.Bala Narasaiah

… Petitioner

AND

The Joint Collector-II, Ranga Reddy District, Khairatabad, Hyderabad and others.

… Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.16119 OF 2007

ORDER:

The writ petition is filed challenging the order of first respondent, dated 23.09.2006, in case No.D5/570/2006, passed in exercise of powers under Section 9 of A.P.Rights in Land and Pattadar Pass Books Act, 1971. By impugned order, first respondent set aside the order of appellate authority – second respondent herein; who had dismissed the appeal filed by fourth respondent against proceedings of third respondent, dated 23.01.2002, whereby and whereunder it was directed to incorporate name of petitioner as pattadar in revenue records in respect of land admeasuring Acs.1.09 guntas in survey No.19 situated at Bibisaheb Maqta, Ghatkesar Mandal of Ranga Reddy District. The brief fact of the matter, to the extent, it is necessary, is as follows. Land admeasuring Acs.4.19 guntas in survey Nos.4, 5, 19 and 20 was owned by Chinna Satyanarayana. He sold an extent of Acs.2.00 out of total extent of M/s.Balaji Metal Industries represented by Nathuram, under an agreement of sale. Nathuram filed a suit for specific performance of agreement of sale on the file of the Court of the Principal Senior Civil Judge, Ranga Reddy District, which was decreed on 11.04.1988. Nathuram died on 14.10.1984. His wife Anjamma was recognized as successor by third respondent in proceedings, dated 01.12.1984. The sixth respondent, daughter of Satyanarayana, was also granted succession by proceedings of third respondent, dated 29.09.1987. The petitioner allegedly purchased an extent of Acs.1.09 guntas (out of Acs.4.19 guntas) under an agreement of sale, dated 16.10.1985 and in 1989 got sale deed registered being document No.10583/89, dated 22.12.1989. After sale of Acs.2.00 to M/s.Balaji Metal Industries and Acs.1.09 guntas to petitioner, respondents 5 and 6 were left with Acs.1.10 guntas.

The petitioner filed an application for rectification of entries before Mandal Revenue Officer (MRO) for mutation. Having come to know that mutation was effected in favour of fourth respondent, he filed an application before first respondent, who ordered on 11.08.1997 to delete the name of fourth respondent. After considering the application of petitioner, third respondent, granted pattadar pass book and title deed (PPB/TD) by proceedings, dated 24.03.1998. The fourth respondent challenged the order of first respondent in case No.B1/1386/90, dated 11.08.1997, in W.P.No.21795 of 1997. The order of third respondent granting PPB in favour of petitioner was also

set aside giving liberty to petitioner and fourth respondent to file applications before third respondent. The petitioner then filed an application before third respondent, who by proceedings, No.B1/101/99, dated 23.01.2002 allowed the same and directed to record the name of petitioner as pattadar/occupant. This was carried in appeal before second respondent by fourth respondent, who confirmed the orders of original authority. As noticed supra, the revisional authority – first respondent herein; set aside the order of second respondent. Another important event to be noticed is, in 1998, the petitioner filed O.S.No.184 of 1998 for recovery of possession. The trial Court as well as first appellate Court dismissed the cause of petitioner and second appeal being S.A.No.1184 of 2006 was also dismissed by this Court on 30.11.2006 observing that fourth respondent herein, who was the sole defendant in the suit, was in possession of the land since 02.07.1979, and therefore, the suit filed for possession after lapse of twelve years is barred by limitation.

Learned senior counsel, Sri Bojja Tarakam, appearing for petitioner, submits that fourth respondent failed to produce documentary evidence in proof of his title and possession except entries in the Pahanis and therefore, order of first respondent, based on such single entry in the Pahani, is vitiated by grave error. According to learned counsel, fourth respondent played fraud on respondents 5 and 6, the successors of original owner Satyanarayana in obtaining possession of land and that when M/s.Balaji Metal Industries purchased an extent of Acs.2.00 from late Chinna Satyanarayana and got a decree for specific performance, the claim of fourth respondent that he purchased entire extent of Acs.1.09 guntas from respondents 5 and 6 is false. The fourth respondent did not produce any agreement of sale, under which he allegedly purchased the land from late Chinna Satyanarayana before the death of latter and therefore, first respondent was in error in reversing the well considered orders of original authority as well as appellate authority.

The petitioner initially obtained PPB from third respondent vide proceedings, dated 24.03.1998. This was set aside by this Court in W.P.No.21795 of 1997. Thereafter as observed by this Court, the petitioner filed another application before the MRO. Before doing so, he filed a suit for recovery of possession. This means that by the time he made an application to third respondent in 1997 or 1999, he was not in possession. As per Rule 26 of A.P.Rights in Land and Pattadar Pass Books Rules, 1989, the PPB cannot be issued to a pattadar even if he has a sale deed in his favour if such pattadar is not in possession of the land. In spite of the same, third respondent passed orders on 23.01.2002 directing to incorporate the name of petitioner in ROR. It is

possible that third respondent was not aware of civil suit filed by petitioner against fourth respondent. Be that as it is, suit being O.S.No.184 of 1998 for recovery of possession was dismissed on 31.12.2003. By that time, the appeal filed by fourth respondent before second respondent being case No.A2/307/2002 was pending. Here again, the decree passed by trial Court and pendency of the appeal before the appellate Court were not brought to the notice of the appellate authority, namely, second respondent. The appeal being A.S.No.30 of 2004 was dismissed by the Court of III Additional District Judge, FTC, Ranga Reddy District on 13.04.2006. The judgment passed by the trial Court as well as appellate Court were available before the revisional authority. He considered this. He noticed that the trial Court recorded findings that i) the petitioner (plaintiff) failed to prove his ownership; (ii) fourth respondent (defendant) perfected his title by adverse possession and that (iii) the suit for recovery of possession is barred by limitation. These findings were confirmed by first appellate Court. The second appeal was dismissed on 30.11.2006 and as noticed by this Court, it was the plea of fourth respondent that he had an agreement of sale, dated 12.07.1979 executed by late China Satyanarayana and that his wife and daughter (respondents 5 and 6 respectively) gave a statement before MRO on 19.08.1999 based on which the property was mutated in his name. These facts are very crucial for determination of the rival claims and the first respondent correctly came to the conclusion that petitioner failed to prove his ownership and possession and therefore, grant of mutation in ROR and PPB is erroneous. The findings recorded by first respondent are thus unassailable. The first respondent has evaluated the facts on probabilities correctly and applied law correctly. In such an event, a writ of Certiorari would not lie.

The writ petition is devoid of any merit and is accordingly dismissed. No costs.

(V.V.S.RAO,J)

.08.2007.

pln